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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARANDA A. GAMETT,

Plaintiff,

v.

NANCY A. BERRYHILL,

Defendant.

Case No. 2:18-cv-01000-MMD-PAL

SCHEDULING ORDER

This case involves judicial review of an administrative action by the Commissioner of the Social Security Administration denying Plaintiff's claim for benefits under the Social Security Act. Plaintiff filed an Application to Proceed *In Forma Pauperis* (ECF No. 1), and the Court screened the Complaint (ECF No. 3) pursuant to 28 U.S.C. § 1915. The Commissioner filed an Answer (ECF No. 9) on August 13, 2018. No additional motions or pleadings have been filed.

The court recognizes that many of these cases have a number of factors in common:

1. Such cases rarely, if ever, require any proceedings in the nature of a trial. Instead, these cases are usually resolved by cross-motions to reverse or remand and to affirm the Commissioner's decision.

2. Sometimes the plaintiff submits new medical reports to the court in support of a request for remand at such a late date in the proceedings as to cause an unnecessary and undesirable delay in the rendering of a decision by the court.

3. The transcript of the evidence adduced at the administrative hearing frequently contains the words "inaudible" or "illegible" in some places, and the administrative record sometimes contains documents which are illegible. These parts of the administrative record may or may not relate to the question of whether the Commissioner's decision is supported by substantial evidence.

1 **THEREFORE, IT IS ORDERED:**

2 1. Defendant shall file an electronic courtesy copy of the administrative record, under
3 seal, in CM/ECF no later than **August 27, 2018**. The courtesy copy shall be filed in a searchable
4 PDF format with each exhibit linked separately and Optical Character Recognition performed.

5 2. In the event Plaintiff intends to request a remand of this case on the basis of new
6 medical evidence, Plaintiff shall file a motion to remand in this court based on new medical
7 evidence no later than **September 12, 2018**, with a copy of the evidence attached to the motion,
8 and shall serve a copy of the motion and medical evidence on the United States Attorney for the
9 District of Nevada, 501 Las Vegas Boulevard South, Suite 1100, Las Vegas, Nevada, 89101.

10 3. In the event Plaintiff serves a motion for remand on the basis of new medical
11 evidence on Defendant, Defendant shall have until **October 12, 2018**, to file either a notice of
12 voluntary remand of the case or points and authorities in opposition to Plaintiff's motion. Plaintiff
13 may file a reply to the Defendant's opposition no later than **November 1, 2018**.

14 4. If Plaintiff seeks remand for consideration of new medical evidence, the motion
15 shall include a statement of reasons why the new evidence was not incorporated into the record at
16 an earlier stage. Under 42 U.S.C. § 405(g), remand for consideration of new evidence will not be
17 granted unless the evidence is new and material, and there is a showing of good cause for failure
18 to incorporate the evidence into the record at an earlier stage.

19 5. In the event Plaintiff does not file a motion to remand on the basis of new medical
20 evidence, Plaintiff shall file a motion for reversal and/or remand no later than **September 12, 2018**.

21 6. Whenever Plaintiff files a motion for reversal and/or remand, which includes issues
22 based on the administrative record, Plaintiff's motion shall include:

23 (a) A specification of each and every condition or ailment, or combination
24 thereof, that allegedly renders Plaintiff disabled and is allegedly supported by evidence in
25 the administrative record.

26 (b) A complete summary of all medical evidence in the record that supports
27 Plaintiff's claim of disability due to each condition or ailment specified in subparagraph
28 5(a) above, with precise references to the applicable portions of the record. This summary

1 shall not include medical evidence unrelated to the conditions or ailments upon which
2 Plaintiff's claim(s) of disability are based. It shall be sufficient compliance with this
3 subparagraph if Plaintiff stipulates that the Administrative Law Judge fairly and accurately
4 summarized the medical evidence in the administrative record.

5 (c) A complete summary of all other evidence adduced at the administrative
6 hearing that supports Plaintiff's claim of disability due to each condition or ailment
7 specified in subparagraph 5(a) above, with precise references to the applicable portions of
8 the record. It shall be sufficient compliance with this subparagraph if Plaintiff stipulates
9 that the Administrative Law Judge fairly and accurately summarized the medical evidence
10 in the administrative record.

11 (d) With respect to each condition or ailment specified in subparagraph 5(a)
12 above, a complete but concise statement as to why the record does not contain substantial
13 evidence to support Defendant's conclusion that Plaintiff is not disabled by each such
14 condition or ailment, or combination thereof.

15 7. If Defendant has not filed a notice of voluntary remand, and the issues in question
16 relate to the administrative record, Defendant shall file a cross-motion to affirm no later than
17 **October 12, 2018**, which will be considered an opposition to Plaintiff's motion. This motion shall
18 include:

19 (a) With respect to each disabling condition or ailment specified by Plaintiff, a
20 complete summary of all medical evidence in the record that Defendant contends
21 constitutes substantial evidence to support the administrative determination that Plaintiff is
22 not disabled due to such condition, ailment, or combination thereof. This summary shall
23 not include medical evidence upon which Plaintiff's claim(s) of disability are based. It
24 shall be sufficient compliance with this subparagraph if Defendant stipulates that the
25 Administrative Law Judge fairly and accurately summarized the medical evidence
26 contained in the record.

27 (b) With respect to each disabling condition or ailment specified by Plaintiff, a
28 complete summary of all testimony adduced at the administrative hearing, including the

1 Administrative Law Judge's findings, if any, concerning the credibility of witnesses, which
2 Defendant contends constitutes substantial evidence to support the administrative
3 determination that Plaintiff is not disabled due to such condition or ailment, or combination
4 thereof. It shall be sufficient compliance with this subparagraph if Defendant stipulates
5 that the Administrative Law Judge fairly and accurately summarized the testimony adduced
6 at the administrative hearing.

7 (c) A statement as to whether there are any inaccuracies in the summaries filed
8 by Plaintiff in response to paragraphs 5(b) and 5(c) of this Order. If Defendant believes
9 Plaintiff's summaries are inaccurate, Defendant shall set forth what additions or correction
10 are required (with appropriate references to the record) in order to make the summaries
11 accurate.

12 (d) The lay definitions of all medical terms contained in the record necessary
13 to be understood in order to determine whether Defendant's decision is supported by
14 substantial evidence.

15 8. The motions filed by Plaintiff and Defendant pursuant to paragraphs 5 and 6 of this
16 Order, respectively, shall also contain appropriate points and authorities dealing with the specific
17 legal issues involved in this case, rather than principles of law applicable to Social Security cases
18 in general.

19 9. Plaintiff shall be deemed to have acceded to the accuracy of the summaries supplied
20 by Defendant in response to subparagraphs 6(a) and 6(b) of this Order, unless within twenty days
21 after being served with Defendant's cross-motion to affirm, Plaintiff files and serves a document
22 setting forth:

23 (a) In what manner the summaries are inaccurate;

24 (b) What additions or corrections are required (with appropriate references to
25 the record) in order to make the summaries accurate; and/or

26 (c) Any definitions of the medical terms that Plaintiff contends are more
27 accurate than the definitions supplied by Defendant.

28 10. The motions filed by both Plaintiff and Defendant shall also contain the following:

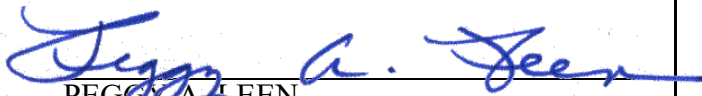
1 (a) A statement as to whether the transcript of the administrative hearing can
2 be adequately understood despite the fact that it might contain the words “inaudible” or
3 “unintelligible” in one or more places, and specifying each page, if any, in which testimony
4 relating to the particular issues of this case cannot be adequately understood.

5 (b) A specification of each page in the administrative record that is partially or
6 totally illegible, and a statement whether each such illegible page contains information relevant to
7 an understanding of any issue presented in this case.

8 11. Oral argument shall be deemed waived, and the case shall stand submitted unless
9 argument is ordered by the court or requested, pursuant to Local Rule 78-2, by one of the parties
10 no later than **October 19, 2018**. Even if one or both of the parties requests oral argument, the final
11 decision as to whether oral argument is warranted remains with the court.

12 12. Failure of a party to file a motion or points and authorities required by this Order
13 may result in dismissal of the action or reversal of the decision of the Commissioner of Social
14 Security as may be appropriate.

15 Dated this 13th day of August, 2018.

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18 PEGGY A. LEEN
19 UNITED STATES MAGISTRATE JUDGE
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